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NOV 19 1993

In re Applications of

) MM DOCKET NO. 93-75

) File No. BRCT-911001LY

[illegible]

and

) File No. BPCT-911227KE

For a Construction Permit for a
New Commercial TV Station to
operate on Channel 45, Miami,
Florida

To: Honorable Joseph Chachkin
Administrative Law Judge

RESPONSE TO OBJECTIONS TO WITNESS NOTIFICATION

GLENDALE BROADCASTING COMPANY

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Its Attorneys

Date: November 19, 1993

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SUMMARY

TBF's objections to Glendale's witness notifications are not well taken. The witnesses called by Glendale are necessary to the development of a complete record under the designated issues. TBF may not offer deposition testimony as part of its direct case without making the witnesses available for cross-examination. Phillip Aguilar's testimony is essential, both to develop all the facts and to give the Presiding Judge an opportunity to assess this former NMTV director. TBF's witnesses with respect to its claim to a renewal expectancy must be made available absent an agreement between TBF and Glendale.

NOV 19 1993

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM DOCKET NO. 93-75
)	
TRINITY BROADCASTING OF FLORIDA, INC.)	File No. BRCT-911001LY
)	
For Renewal of License of)	
Station WHFT(TV) on Channel 45,)	
Miami, Florida)	
)	
and)	
)	
GLENDAL E BROADCASTING COMPANY)	File No. BPCT-911227KE
)	
For a Construction Permit for a)	
New Commercial TV Station to)	
operate on Channel 45, Miami,)	
Florida)	
)	
To: Honorable Joseph Chachkin		
Administrative Law Judge		

RESPONSE TO OBJECTIONS TO WITNESS NOTIFICATION

Glendale Broadcasting Company (Glendale), by its attorneys, now replies to the "Objections to Witness Notification" filed by Trinity Broadcasting of Florida, Inc. (TBF) on November 18, 1993.¹

TBF objects to the examination of certain witnesses. Its rationale for its objections, however, have absolutely no

¹ Glendale requests leave to file this pleading to the extent such leave is required. In its cover letter, TBF states its intention to file a pleading responsive to Glendale's "Response to Witness Notification". Glendale and TBF must be given the same procedural rights. Moreover, TBF's objections threaten the development of a full and complete record in the hearing, and Glendale must be given a full opportunity to be heard on this important matter.

foundation in either the Commission's rules or the Presiding Judge's rulings. Indeed, TBF's position is squarely contrary to the Commission's rules and practices. All of its objections must be denied.

Allan Brown, Terrence M. Hickey, Phillip A. Crouch,
Warren Benton Miller, George Horvath, Jr.,
Matthew Crouch, and Charlene Williams

Without citing any authority whatsoever, TBF claims that Glendale has waived the right to notice these witnesses for examination whatsoever by not offering their deposition transcript or by calling these people as adverse witnesses on November 12. No Commission rule or order of the Presiding Judge required Glendale to list every witness it wanted to examine on November 12.

In essence, TBF is arguing that a party may never call a witness for cross-examination unless that witness sponsors direct case testimony. The Commission has never adopted such a rule or policy. In cases involving applicants for new facilities, limited partners and non-voting stockholders are routinely required to appear for cross-examination - regardless of whether they sponsored direct testimony - if their involvement in the applicant's affairs is in question. Similarly, the witnesses listed above must be produced because their presence will advance the development of a complete record.

TBF's argument has no logical basis whatsoever. If Glendale had followed the procedure insisted upon by TBF, Glendale's notification of its intent to examine these witnesses would have come only two business days earlier than it did. TBF does not attempt to claim that any prejudice resulted from that two day delay. Glendale was not required to notify these witnesses for examination on November 12, and its November 16 notification was timely. TBF's procedural argument must be rejected.

TBF also argues that cross-examination of these witnesses is "substantively unwarranted". As the Mass Media Bureau's witness notification letter demonstrates, Glendale was under no obligation to provide any justification for notifying any of the witnesses it noticed. Contrary to TBF's argument, each witness' knowledge about NMTV and their participation in NMTV's affairs as officers or employees is relevant. The only competent way to ascertain what their role was in NMTV's affairs and what these people know about the TBN-NMTV relationship is their testimony.

The following brief analysis of the testimony to be offered by the witnesses called by Glendale establish that all of these persons have knowledge of matters relating to the relationship between NMTV and TBN. They also have knowledge of practices employed by NMTV and TBN which are relevant to the bona fides of NMTV as a corporation. Their testimony will be relevant to both qualifying issues designated against TBF.

Warren Benton Miller, II is Vice President of Engineering for TBN and acts as an unpaid Technical Consultant to NMTV. (Glendale Exhibit 143, Dep. Tr. 14, 29).

The following exhibits to be offered by Glendale establish the extraordinary variety of important services rendered by Mr. Miller to NMTV.

<u>DESCRIPTION</u>	<u>EXHIBIT NO.</u>
Trinity Broadcasting Network Engineering Department Memo from Ben Miller to Alice Fields dated 10/3/91	143
Letter from Ben Miller to Michael Blackwell (Syncom) dated 8/13/92	144
Letter from Ben Miller to Michael Blackwell (Syncom) dated 8/21/92	146
Memorandum to All Chief Engineers from Ben Miller dated 5/10/89	151
Memo from Ben Miller to Mark Fountain dated 12/6/89	154
Memo from Ben Miller to Darlene Eve dated 12/22/89	155
National Minority TV, Inc. Engineering Department Memo to Paul Crouch from Ben Miller dated 1/10/90 with attachment memo from Mark Fountain to Ben Miller also dated 1/10/90	156
National Minority TV, Inc. Engineering Department Memo to Jim McClellan from Ben Miller dated 9/27/90	157
National Minority TV, Inc. Engineering Department Memo to Eddie Sills from Ben Miller dated 10/10/90	158

<u>DESCRIPTION</u>	<u>EXHIBIT NO.</u>
National Minority TV, Inc. Engineering Department Memo to Darlene Eve from Ben Miller dated 10/10/90	159
National Minority TV, Inc. Engineering Department Memo to Darlene Eve from Ben Miller dated 10/10/90	160
National Minority TV, Inc. Engineering Department Memo to Mark Fountain from Ben Miller dated 12/6/90	161
National Minority TV, Inc. Engineering Department Memo to Eddie Sills from Ben Miller dated 12/10/90	162
National Minority TV, Inc. Engineering Department Memo to Eddie Sills from Ben Miller dated 12/10/90	163
National Minority TV, Inc. Engineering Department Memo to Mark Fountain from Ben Miller dated 12/12/90	164
National Minority TV, Inc. Engineering Department Memo to Eddie Sills from Ben Miller dated 1/17/91	165
National Minority TV, Inc. Engineering Department Memo to Mark Fountain from Ben Miller dated 2/12/91	166
Memorandum from Ben Miller to Colby May dated 5/1/91	168
National Minority TV, Inc. Engineering Department Memo to Jim McClellan from Ben Miller dated 6/13/91	169
National Minority TV, Inc. Engineering Department Memo to Mark Fountain from Ben Miller dated 7/24/91	170
Trinity Broadcasting Network Engineering Department Memo to Paul Crouch from Ben Miller dated 2/19/92	172

<u>DESCRIPTION</u>	<u>EXHIBIT NO.</u>
National Minority TV, Inc. Engineering Department Memo to Mark Fountain from Ben Miller dated 7/20/92	177
National Minority TV, Inc. Engineering Department Memo to Jane Duff from Ben Miller dated 8/4/92	178
National Minority TV, Inc. Engineering Department Memo to Mark Fountain, Jim McClellan from Ben Miller dated 1/19/93	179
National Minority TV, Inc. Engineering Department Memo to Mark Fountain from Ben Miller dated 2/10/93	180
National Minority TV, Inc. Engineering Department Memo to Jane Duff from Ben Miller dated 2/24/93	181
National Minority TV, Inc. Engineering Department Memo to Jane Duff from Ben Miller dated 2/24/93	182

Examination of Mr. Miller is necessary to put the exhibits in context.

Furthermore, Glendale may be required to examine Mr. Miller on voir dire if there are objections to any of these exhibits.

George A. Horvath, Jr. is the Low Power Coordinator of TBN (Dep. Tr. 11). He serves in the same capacity for NMTV, although Horvath's title is Consultant, which was given to him by Jane Duff and Warren Miller (Dep. Tr. 18-19, 30). Mr. Horvath receives no compensation from NMTV (Jane Duff Dep. Tr. 73). Mr. Horvath provides a wide variety of engineering

services for NMTV (Dep. Tr. 19-21). Attached hereto are Glendale Exhibits 139-141 to be offered by Glendale reflecting services rendered by Mr. Horvath on behalf of NMTV.

Allan Brown is Chief of Staff for TBN and is Assistant Secretary of NMTV (Dep. Tr. 6). He was a signatory to an Agreement To Provide Business Services which is attached hereto (Glendale Exhibit 65). That agreement purports to govern all the financial arrangements between NMTV and TBN. He purportedly has no knowledge as to how the consideration reflected in the agreement to provide the business services of \$422.51 monthly was arrived at (Dep. Tr. 25). Nor does Mr. Brown purport to have any knowledge as to why he signed the agreement (Dep. Tr. 57). Mr. Brown has personal knowledge of the procedure utilized concerning the preparation of purchase orders to pay NMTV bills (Dep. Tr. 44-45).

Terrence Hickey is Assistant Secretary of NMTV (Glendale Exhibit 73). He was a signatory to a Memorandum between NMTV and TBN attached hereto (Glendale Exhibit 84). The Memorandum concerns a Promissory Note of \$4,030,442 from NMTV to TBN. According to Joint Stipulation 1 para. 43, notwithstanding the executed Memorandum, the Note referred to in the Memorandum was never prepared.

Mr. Hickey signed NMTV documents as a Director, although he said he was not a Director (Dep. Tr. 22, 24-25). Mr. Hickey has attended NMTV Board of Directors meetings (Dep. Tr. 29-30). NMTV corporate documents attached hereto (Glendale

Exhibit 34) reflect Mr. Hickey as Secretary of the corporation when the minutes reflect he was not elected to that office (Dep. Tr. 27).

Matthew Crouch was Assistant Secretary of NMTV, but he was not sure he was an officer or when he ceased being an Officer (Dep. Tr. 15-16). He thinks he was told of his election by his father, Paul Crouch (Dep. Tr. 16). Mr. Crouch knew nothing about how the activities of NMTV were conducted (Dep. Tr. 23). He testified that Paul Crouch told him he wanted Matthew as a signatory on NMTV bank accounts as a "trusted convenience" (Dep. Tr. 26).

Phillip Crouch was an Assistant Secretary of NMTV, as well as an Officer of several TBN corporations where there were interlocking Board of Directors and Officers. However, he had no knowledge as to how he was elected to Assistant Secretary of NMTV or who elected him (Dep. Tr. 33-34). He testified he did not know until the day of his deposition that he had signed documents in his capacity as Assistant Secretary of NMTV (Dep. Tr. 66). Although he was a signatory to NMTV bank accounts, he had no recollection of when that event occurred (Dep. Tr. 35).

Charlene Williams was an Officer and employee of TBN. She was also an officer of the corporations which have interlocking Board of Directors and officers with TBN (Dep. Tr. 5, 20). Her deposition reflects the circumstances and her

knowledge surrounding her becoming and ceasing to be an officer of NMTV (Dep. Tr. 19, 39).

Edward Rick, III and Barry L. March

TBF is offering deposition testimony, affidavits, and related documents of Messrs. Rick and March with respect to the issue specified against Glendale. The Mass Media Bureau is offering the affidavits of the individuals. Glendale requested that either TBF or the Mass Media Bureau make these individuals available for cross-examination. The Mass Media Bureau, to Glendale's knowledge, has not objected to Glendale's request. TBF's objection to making Messrs. Rick and March available is ill-founded.

Section 1.321(c)(3) of the Commission's rules unambiguously requires that, absent an agreement with Glendale, TBF must make Messrs. Rick and March available for cross-examination if TBF is offering their deposition testimony. TBF's argument that it is not required to make Rick and March available for cross-examination because Glendale has already deposed these individuals is, on its face, absurd. Under TBF's theory, a party wishing to use a deposition need not make the deponent available for cross-examination if the party against whom the deposition is being used asked questions at the deposition. The rule, however, offers no pertinent exception to the rule that if a deposition is to be used as direct testimony, the witness must be made

available for cross-examination. The purpose of a deposition is not to put on the record every available fact but to discover facts which are previously unknown to the party. Allowing the depositions to be entered into evidence over Glendale's objection without allowing cross-examination would therefore seriously prejudice Glendale.

Moreover, TBF's exhibit consists not only of deposition transcripts but of affidavits from Messrs. Rick and March. TBF has not even bothered to explain how the affidavits can be entered into evidence without cross-examination. The fact that the affidavits were made deposition exhibits does not allow TBF to offer the affidavits without testing them through cross-examination.

TBF's purported concern for the burden that would result to Messrs. Rick and March is specious. TBF expressed no such concern when it requested that David Gardner, Lee Sandifer, and Harold Etsell, Jr., who have no connection with Glendale, appear for cross-examination. Indeed, Mr. Etsell no longer works for Raystay Co. Furthermore, it is TBF that subjected the two individuals to this burden by offering their testimony into evidence.

The Presiding Judge must hold that, absent an agreement, Messrs. Rick and March must be made available for cross-examination. He should inquire if any party intends to make either individual available for cross-examination. If the individuals are not made available for examination, the

Presiding Judge should rule that TBF exhibits 201 and 202 and Mass Media Bureau exhibits 540 and 541 will be rejected.

Phillip Russell Aguilar

TBF's attempt to prevent Glendale from examining at hearing one of the individuals who TBF claims controlled NMTV is most disturbing. For the reasons stated above, TBF may not offer Aguilar's deposition into evidence without making him available for cross-examination. Regardless of whether the deposition is offered into evidence, Aguilar's testimony is essential to the development of a full and complete record under the issues specified against TBF.

As a director and officer of NMTV, Aguilar is one of the minorities who, according to TBF, controlled NMTV's affairs. What Aguilar did and knew about NMTV must be fully explored under the designated issues. Glendale was never placed on notice that it was required to develop at the deposition every fact relating to Aguilar's relationship with NMTV.

Moreover, Glendale believes it is particularly important that the Presiding Judge have an opportunity to see Aguilar in person, to ask him questions, and to observe his demeanor. The abuse of process character issue specified against TBF requires a determination of the intent of the people involved with NMTV. Glendale believes it is essential that when a character issue is specified, the Presiding Judge have an opportunity to observe the demeanor of all of NMTV's directors

and to make findings concerning their demeanor. Aguilar is a flamboyant and individualistic person. In order for the Presiding Judge to properly assess Aguilar and his role in NMTV, the Presiding Judge must view Aguilar in person.

The fact that Aguilar was a director during the period when NMTV was the licensee of full-power broadcast stations only increases the need for his testimony. The designated issues require a determination of who controlled NMTV during the period when NMTV operated two television stations. Indeed, that time period is particularly important because if TBN exercised de facto control over NMTV in that time period, it was violating Section 73.3555(e) of the Commission's rules. TBF's argument that Aguilar's testimony is unnecessary because of "the limited time period" when he was a director must be rejected.

Finally, TBF's claim that requiring Aguilar's testimony would be unduly burdensome must be rejected. The vital need for Aguilar's testimony far outweighs any burden that would result to him. TBF has utterly failed to make a specific and persuasive showing why it would be impossible for Aguilar to testify. Many of TBF's other witnesses are ministers, but they are able to come and testify. TBF has not explained why Aguilar is any different. Since TBF is offering Aguilar's deposition transcript, and since testimony from Aguilar is essential to the development of a complete record, TBF must make Aguilar available for cross-examination.

Michael S. Everett, Teresa Robin Downing, Lindee
C. Dressler, and Christopher A. Holt

These witnesses are sponsors of TBF's exhibits relating to its claim to a renewal expectancy. As noted by TBF, Glendale and TBF agreed to a discovery process in which witnesses would be interviewed informally instead of being deposed. TBF and Glendale would then prepare and agree upon stipulations of what the witnesses would testify to. As noted in the agreement (TBF Objections, Attachment 3), Glendale anticipated (but did not guarantee) that if appropriate stipulations were reached, Mr. Everett and Ms. Downing would not be called to testify at the hearing.

This procedure was used in the Longmont, Colorado FM comparative renewal proceeding (MM Docket No. 90-424). In that case, the informal interviews took place after direct case exhibits were exchanged, and the stipulations were not finalized and offered into evidence until the end of the hearing. In this case, the parties agreed to an interview of Mr. Everett and Ms. Downing in September.

After those interviews took place, it was apparent that (1) certain documents required to be produced by TBF had not been produced, and (2) there would be another individual other than Mr. Everett and Ms. Downing sponsoring TBF's renewal expectancy direct case concerning TBN network programming. The documents in question were eventually produced. After repeated inquiries of counsel for TBF, Ms. Dressler was

identified as the pertinent individual. A telephone interview of Ms. Dressler was conducted on October 29, two weeks before direct case exhibits were to be exchanged. No set deadline was ever set or discussed for exchanging drafts of stipulations. When Glendale reviewed TBF's direct case exhibits, substantial adjustments had to be made to the draft stipulations Glendale was working on because much of the material was already in TBF's direct case.

Glendale has not abandoned the procedure established between the parties. It will be transmitting drafts of proposed stipulations to counsel for TBF either today or on Monday. There was never any agreement that stipulations had to be drafted or agreed upon by the exhibit exchange date.² If Glendale and TBF can agree upon appropriate stipulations, and if TBF will agree to the introduction of certain additional documents into evidence, Glendale will release Mr. Everett, Ms. Downing, and Ms. Dressler from cross-examination. If the parties cannot reach appropriate agreements, however, examination of these parties will be necessary to the development of a complete record under the comparative issue. All three individuals have sponsored extensive testimony concerning the programming of WHFT(TV), and Glendale has the right to cross-examine these individuals. Thus, the Presiding

² Indeed, Glendale and TBF have agreed to a stipulation in lieu of testimony from David Scott Morris. That stipulation was only finalized yesterday.

Judge should deny TBF's objections, subject to the parties working out appropriate agreements.

Glendale was unaware that Mr. Holt would be a sponsor of TBF's direct case until the exhibits were exchanged. Glendale intends to object to Mr. Holt's exhibit. It may be necessary to conduct voir dire examination of Mr. Holt in order to establish some of the bases for Glendale's objections. Glendale is not asking that Mr. Holt be sequestered from the rest of the hearing. Since Mr. Holt's testimony may be necessary to determine the admissibility of his exhibit, TBF's objection must be denied. Glendale is also willing to consider a stipulation or other procedures which would eliminate the need for Mr. Holt's live testimony.

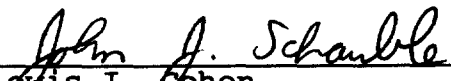
Conclusion

The Presiding Judge's primary obligation is to ensure the development of a full and complete record on the issues. The Review Board and the Commission have not hesitated to remand or to reopen proceedings when a full record was not developed. See, e.g. Mary Anne Embrey, FCC 93R-56 (released November 12, 1993), WCVQ, Inc., 5 FCC Rcd 3824, 67 RR 2d 1663 (1990). TBF's objections threaten the development of a full record. Testimony from each of the witnesses that TBF objects to is necessary to the development of a complete record which will avoid a remand.

Accordingly, Glendale asks the Presiding Judge to deny TBF's "Objections to Witness Notification".

Respectfully submitted,

GLENDALE BROADCASTING COMPANY

By 
Lewis I. Cohen
John J. Schauble

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1129 20th Street, N.W., # 507
Washington, D.C. 20036
(202) 466-8565

Its Attorneys

Date: November 19, 1993

GLENDALÉ BROADCASTING COMPANY

EXHIBIT NO. 34

MM DOCKET NO. 93-75

CERTIFICATE OF AMENDMENT
OF
ARTICLES OF INCORPORATION
OF
TRANSLATOR T.V., INC.

ENDORSED
FILED
In the office of the Secretary of State
of the State of California
FEB 23 1987
MARCH FONG EU, Secretary of State

PAUL F. CROUCH and TERRY HICKEY certify:
1. That they are the President and Secretary, respectively,
of TRANSLATOR T.V., INC., a California non-profit corporation.

2. That at a meeting of the Board of Directors of said
corporation held on February 2, 1987, the following resolution
was unanimously adopted:

RESOLVED, that Article I of the Articles of
Incorporation of this corporation be amended to read as
follows:

The name of this corporation is NATIONAL
MINORITY T.V., INC.

3. That the number of directors who voted affirmatively for
the adoption of said resolution is three and the number of
directors constituting a quorum is two.

4. The corporation has no members.

Paul F. Crouch
PAUL F. CROUCH

Terry Hickey
TERRY HICKEY

Each of the undersigned declares under penalty of perjury
that the matters set forth in the foregoing Certificate are true
and correct. Executed at Tustin, California on the 10th day of
February, 1987.

Paul F. Crouch
PAUL F. CROUCH

Terry Hickey
TERRY HICKEY

-W 52110
BRC-

52109

GLENDALÉ BROADCASTING COMPANY

EXHIBIT NO. 65

MM DOCKET NO. 93-75

**AGREEMENT TO PROVIDE
BUSINESS SERVICES**

This Agreement is entered this 2 day of Jan,
1991 between TRINITY CHRISTIAN CENTER OF SANTA ANA, INC. dba
TRINITY BROADCASTING NETWORK ("TBN") and National Ministry of
Evangelism ("Company").

I

PARTIES TO THIS AGREEMENT

In order to properly conduct its business, Company hereby employs TBN to provide the services described in Section II hereinbelow. TBN's staff consists of personnel that are experienced and qualified to perform such services.

II

SERVICES TO BE PERFORMED

TBN agrees to provide bookkeeping and accounting services for Company, with the assistance of independent Certified Public Accountants, attorneys and consultants that TBN will engage as required. Such services shall include the preparation of Company's payroll, financial statements, federal and state income tax returns and reports, purchasing requirements as assigned to TBN, data processing and the servicing of Company's accounts payable. TBN agrees to provide Company with oral and written reports regarding such services as may be reasonably required by Company.

III

PAYMENT FOR SERVICES

In consideration of such services, Company agrees to pay TBN \$ 422.50 per month commencing Jan 2 91, 1991. In addition to such payments, Company agrees to provide TBN with such funds as may be necessary for the payment of fees required by governmental agencies, the payment of Company's payroll including all amounts Company is required to withhold and the payment of Company's accounts payable.

**AGREEMENT TO PROVIDE
BUSINESS SERVICES**

IV

TERM

This Agreement shall terminate on December 31,
19 94, unless terminated prior thereto pursuant to thirty (30)
days written notice from one party to the other.

V

CONFIDENTIALITY

The parties agree that all information and documents provided to TBN by Company shall be confidential and shall be provided to government agencies and third parties only as is reasonably required for the performance of this Agreement.

VI

INDEPENDENT CONTRACTOR

TBN shall perform the services described in this Agreement as an independent contractor.

Each party agrees to indemnify and hold the other harmless with respect to claims, suits or liabilities arising out of the conduct, omissions or performance of this Agreement by the other party.

VII

ENTIRE AGREEMENT

This contract expresses the entire Agreement between the Company and TBN regarding this matter. This Agreement can only be modified with another written agreement signed by both the Company and TBN. This Agreement shall be binding upon both the Company and TBN and their respective legal representatives and successors in interest.

**AGREEMENT TO PROVIDE
BUSINESS SERVICES**

VIII

LEGAL FEES

If either party brings a law suit in order to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which party may be entitled.

"TBN"

**TRINITY CHRISTIAN CENTER OF SANTA
ANA, INC. dba TRINITY BROADCASTING
NETWORK**

By

Allen G. Gower

"Company"

National Ministry, Inc.

By

John L. Huff